

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Implementation of Sections of the)
Cable Television Consumer)
Protection and Competition Act of)
1992; Rate Regulation)

MM Docket No. 93-215

To: The Commission)

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OPPOSITION TO PETITION FOR RECONSIDERATION

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December 15, 1994

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OPPOSITION TO PETITION FOR RECONSIDERATION

Discovery Communications, Inc. ("Discovery"), by its attorneys, hereby submits its opposition to the petition for reconsideration (the "Petition") filed by Bell Atlantic¹ in the above-captioned proceeding on November 14, 1994, which asks the Commission to reconsider its decision in the Productivity Offset Order² not to adopt a productivity offset for the cable industry. As set forth below, the FCC should deny the Petition because it simply repeats arguments previously made and rejected in this proceeding and presents no additional data to support adoption of a productivity offset.

¹ Bell Atlantic Petition for Reconsideration of Memorandum Opinion and Order in MM Docket No. 93-215 (filed Nov. 14, 1994).

² Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation (Memorandum Opinion and Order), MM Docket No. 93-215, FCC 94-226 (rel. Sept. 29, 1994) ("Productivity Offset Order").

I. PETITIONER'S REPETITION OF FLAWED "REGULATORY PARITY" ARGUMENTS IN SUPPORT OF A CABLE PRODUCTIVITY OFFSET PROVIDES NO BASIS TO REVISIT THE COMMISSION'S DECISION

The Petition's argument that the purported "convergence" of the telephone and cable industries warrants adoption of a cable productivity offset comparable to that applied to telephone companies is speculative and anecdotal and is not supported by the historical data necessary to impose any cable productivity offset. Indeed, the Commission quite properly has rejected Bell Atlantic's contention in the past. Bell Atlantic offers no new evidence to justify a different result now.

The Order rightly recognizes that there is no factual support for a cable productivity offset.³ As an initial matter, the Petition is simply incorrect in its insistence that the cable industry failed to provide productivity data.⁴ To the contrary, NCTA provided the Commission with a study of three cable MSOs demonstrating that there has been no increase in productivity in the cable industry.⁵ In contrast to NCTA's careful and sober analysis, the "report" submitted by Bell Atlantic, as the Commission has recognized, is not a study, but rather an argumentative and conclusory exposition on the need for a cable productivity offset.⁶

Furthermore, as Discovery has stated previously, a productivity offset is simply not appropriate where the Commission has insufficient experience and data with respect to the cable

³ See Productivity Offset Order at ¶ 7.

⁴ See Petition at 2.

⁵ See Productivity Offset Order at ¶ 3 n.8.

⁶ See id. at ¶ 6.

industry upon which to establish a reliable productivity offset.⁷ Unlike the telephone industry - where the FCC and economists have studied the industry's productivity over a significant period of time -- the cable industry has neither the history of regulation nor the operational experience on which to measure a productivity offset. The Petition fails entirely to supplement the record in this respect. Moreover, as a matter of public policy, imposition of a productivity offset is ill advised because it will merely exacerbate the lingering disincentives to investment in programming and infrastructure that the Commission's rules have created.⁸

Finally, Petitioner continues to overlook the substantial differences between the cable and telephone industries. The two industries are distinct not only in terms of their histories, economics, and technologies, but also in terms of the different statutory regimes governing cable operators and common carriers. Petitioner's reliance on the purported "convergence" of the two industries is therefore misplaced.

⁷ See Comments of Discovery Communications, Inc. in MM Docket No. 93-215 (filed Aug. 25, 1993) at 6-7.

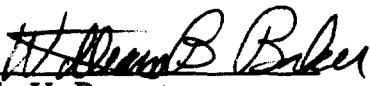
⁸ See Comments of Discovery Communications, Inc. in MM Docket No. 93-215 (filed July 1, 1994) at 9.

II. CONCLUSION

For the foregoing reasons, Discovery respectfully requests that the Commission deny the Petition and affirm its decision not to adopt a productivity offset for the cable industry.

Respectfully submitted,

**DISCOVERY COMMUNICATIONS,
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of
December, 1994, I caused copies of the foregoing "Opposition
to Peittion for Reconsideration" to be mailed via first-class
postage prepaid mail to the following:

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